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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 GEORGE LUSTER,)
10 vs. Plaintiff,) 2:04-cv-00281-LRH-LRL
11) ORDER
12 WARDEN JAMES SCHOMIG, et al.,)
13 Defendants.)
14 _____)

15 Before the court is Defendant's Motion to Dismiss/Motion for Summary Judgment (#31).
16 Plaintiff has filed an opposition to a Motion to Stay Discovery (#34) by Defendants which, due to
17 Plaintiff's pro se status, the court will treat as an opposition to Defendants' Motion to Dismiss/
18 Motion for Summary Judgment (#31). Defendants' Motion to Stay Discovery (#32) was denied
19 by Order (#33).

20 It appears from Plaintiff's opposition/response to Defendants' Motion to Stay Discovery
21 that there are genuine disputes of fact concerning the actual usage of the lighting in inmates' cells
22 and the extent to which Plaintiff may have complained concerning headache and vision problems
23 arguably related to Plaintiff's contention that cell lighting is inadequate. Further disputes appear
24 to exist concerning the extent to which complaints and grievances have been properly presented
25 and exhausted by Plaintiff.

26 This action appears to be one in which there are genuine disputes of fact, discovery is
27 incomplete, and Defendants' Motion to Dismiss/Motion for Summary Judgment (#31) should be
28 denied without prejudice to raising similar challenges upon completion of discovery.

Good cause appearing, Defendants' Motion to Dismiss/Motion for Summary Judgment (#31) is DENIED.

IT IS SO ORDERED.

DATED this 26th day of March, 2007.

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**LARRY R. HICKS
UNITED STATES DISTRICT JUDGE**